

## **REMARKS**

Claims 1-11 are pending in this application. Claims 1-11 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over “applicant’s own disclosures.” This reason for rejection is respectfully traversed. Claims 1-3, 5 and 7 have been amended and claim 8 has been cancelled. In view of these amendments and for the reasons that follow, it is respectfully submitted that this application is now in a condition to be allowed. Reconsideration of this application is therefore respectfully requested.

Applicant gratefully acknowledges the telephonic interview conducted on July 23, 2008.

The present invention relates to optimizing the value of “idle” inventory, in this case the value of time slots allocated for the insertion of commercial messages (“spots”) in broadcast media. The problem solved by the invention requires predicting the amount of inventory (spots), and extracting sufficient data from to set value (rates and ratings) along with supporting data for billing in the form of affidavit clearance and proof of value delivered. Applicant’s systems use performance data contained in a database with viewership data to calculate precise delivery values not found in the prior art, and from these data and calculations, can more accurately predict how to distribute commercial spots so that predetermined performance criteria are met.

### **Claim Rejection - 35 U.S.C. § 103(a)**

Claims 1-11 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over “applicant’s own disclosures (background of the invention).”<sup>1</sup> This reason for rejection is respectfully traversed. For the reasons set forth below, Applicant respectfully submits that when the scope and content of the asserted disclosure is compared with the amended claims, it is apparent that the invention

---

<sup>1</sup> Applicant reserves the right to challenge the prior art status of the subject matter asserted in the Office Action should an appeal be necessitated.

would not have been obvious to one of ordinary skill in the art at the time the invention was made.

Claim 1 has been amended to more precisely define the present invention and in particular, the methods disclosed in FIG. 3 and disclosed in paragraphs 30-38 of the specification as filed. Claim 2 has also been amended to more precisely define the present invention and in particular, the methods disclosed in FIG. 4 and disclosed in paragraphs 39-44 of the specification as filed. Claim 3 has been amended to more precisely define the present invention and in particular, the aspect of the present invention described in paragraph 47 whereby using more precise viewership data results in the ability to more accurately predict how to deliver spots in the future.

### **The Scope and Content of the Prior Art**

The Office Action quotes parts of paragraphs [8], [9], [11], [25] and [28] of the specification as “prior art” and the quoted lines are then applied to the language of the claims. Paragraphs 9 and 11 are contained within the “Background of the Invention” section of the application and describe the basic ideas of affidavits of performance and using Nielsen daypart ratings to estimate household impressions. However, Paragraphs 25 and 28 are contained within the “Detailed Description of the Invention” section of the application. As applied to reject the claims, neither paragraph discloses or infers anything beyond that disclosed in the Background of the Invention that would qualify as prior art under the standard articulated in MPEP 2106. The paragraphs each contain a single sentence that simply repeats that affidavits of performance are known and Nielsen daypart ratings are known. Intervening Paragraphs 26 and 27 in fact refer to “the first part of the processing” (inherently meaning “in accordance with the present invention”) and “the next step” (again, “of the present invention is inferred) in a manner that makes it clear that the subject matter disclosed in these paragraphs, taken as a whole, is part of the applicant’s invention, and not the prior work of “another.” Therefore, except for a single sentence in each paragraph, it is respectfully submitted that neither of Paragraphs 25 and 28 can be relied upon in their entirety to reject the claims in the manner applied in the Office Action.

### **The Differences Between the Prior Art and the Amended Claims**

Independent claims 1-3 have been amended such that even if the proposed combination of “prior art” in the Office Action were made, the resulting system would not include all of the limitations of the independent claims as amended. As explained in paragraph [10] the prior art method used a “master zone” and made assumptions about how many times a spot ran across multiple zones. As explained in paragraph [11] the prior art also determined impressions based on a daypart (multiple hour) Nielsen rating. These approximations were then aggregated in a very crude manner to give an approximation of how many people saw a given spot. In contradistinction, the present invention, as defined by the amended claims, collects data representing each airing of each spot in a database, and correlates each airing with specific audience data for the time slot the spot aired, most preferably quarter hour data. These more precise calculations permit both more accurate billing for spots that have been aired, and create a database to which predictive algorithms are applied to create forecasts and manage inventory prior to spots being aired.

In view of these differences and the additional language inserted into claims 1-3, it is respectfully submitted that all the pending claims define a patentably distinct invention neither disclosed nor suggested in the Background of the Invention nor in any prior art of record.

Additionally, the Office Action notes that the specification as filed “does not expressly show automating steps.” However, Applicant does not contend that the present invention is merely the automating of a known process. As set forth in MPEP 2106, “merely using a computer to automate a known process does not by itself impart non-obviousness to the invention.” (citing cases). Instead, each of independent claims 1, 2 and 3 has been amended to recite specifically the methods of the present invention, including but not limited to the use of viewership information based on fractions of an hour and correlating these data with actual delivery data in a database. The data records contained therein are then processed by multiplication or division operations to determine a particular spot’s delivery, and then each calculated value is aggregated (summed) to determine a national equivalent unit in a manner neither disclosed nor suggested in the prior art.

As noted recently by the Supreme Court in *KSR International Co. v. Teleflex, Inc.*, 550 U.S. \_\_\_, 127 S.Ct. 1727 (2007) when determining obviousness, one "should be aware, of course, of the distortion caused by hindsight bias." (*KSR*, slip op. at 17). In this instance, all the pending claims stand rejected over information set forth in the application itself. Under the long-standing law affirmed by *KSR*, this is not an appropriate showing of obviousness. *Id.*

### **Conclusion**

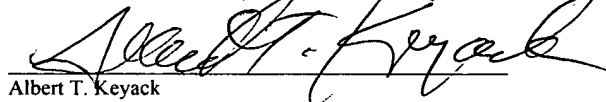
It is therefore respectfully submitted that since the present invention is neither disclosed nor suggested by any prior art of record, that all the pending claims would not have been obvious. The present application, including the amendments set forth above and the additional materials submitted herewith, is now in a condition to be allowed. Notice to this effect is earnestly solicited.

Respectfully submitted,



Albert T. Keyack  
Registration No. 32,906  
Attorney for Applicant  
(215) 738-5925

I, Albert T. Keyack, Registration No. 32,906, hereby certify that this correspondence is being transmitted by facsimile to the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450 to facsimile number (571) 273-8300 on July 30, 2008.



Albert T. Keyack  
Registration No. 32,906